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Regulations, Part 530: Employment of Homeworkers in Certain Industries

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PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

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SOURCE: 24 FR 729, Feb. 3, 1959, unless otherwise noted.

§ 530.1 Definitions.

(a) The meaning of the terms "person," "employ," "employer," "employee," "goods," and "production," as used in this part, is the same as in the Fair Labor Standards Act of 1938, as amended.

(b) "Industrial homeworker" and "homeworker," as used in this part, mean any employee employed or suffered or permitted to perform industrial homework for an employer.

(c) "Industrial homework," as used in this part, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production.

(d) The women's apparel industry is defined as follows: The production of women's, misses' and juniors' dresses, washable service garments, blouses, and neckwear from woven or purchased knit fabric; women's, misses', children's and infants' underwear, nightwear, and negligees from woven fabrics; corsets and other body supporting garments from any material; other garments similar to the foregoing; and infants; and children's outerwear.

(e) The jewelry manufacturing industry is defined as follows:

(1)(i) The manufacturing, processing, or assembling, wholly or partially from any material, of jewelry, commonly or commercially so known. Jewelry as used herein includes without limitation, religious, school, college, and fraternal insignia; articles of ornament or adornment designed to be worn on apparel or carried on or about the person, including, without limitation, cigar and cigarette cases, holders, and lighters; watch cases; metal mesh bags and metal watch bracelets; and chain, mesh, and parts for use in the manufacture of any of the articles included in this definition. Jewelry as used in this part does not include pocket knives, cigar cutters, badges, emblems, military and naval insignia, belt buckles, and handbag and pocketbook frames and clasps, or commercial compacts and vanity cases, except when made from or embellished with precious metals or precious, semiprecious, synthetic or imitation stones, or the assaying, refining, and smelting of base or precious metals.

(ii) The term "parts" as used in subdivision (i) of this subparagraph does not include parts which are used predominantly for products other than jewelry, such as springs, blades, and nail files. The term "commercial compacts and vanity cases" as used means compacts and vanity cases which bear the trade name or mark of a cosmetic manufacturer and are made for the purpose of distributing or advertising said cosmetics.

(2) The manufacturing, cutting, polishing, encrusting, engraving, and setting of precious, semiprecious, synthetic, and imitation stones.

(3) The manufacturing, drilling, and stringing of pearls, imitation pearls, and beads designed for use in the manufacture of jewelry.

(4) The term "hand-fashioned jewelry" as used in § 530.12(b) means articles of jewelry commonly known as genuine Navajo, Pueblo, Hopi, or Zuni handmade jewelry which in all elements of design, fashioning and ornamentation are handmade by methods and with the help of only such devices as permit the maker to determine the shape and design of each individual product: *Provided,* That silver used in the making of such jewelry shall be of at least nine hundred fineness, and that turquoise and other stones used shall be genuine stones, uncolored and untreated by artificial means: *And provided further,* That power machinery is permitted in the production of findings, in the cutting and polishing of stones, in the buffing and polishing of completed products, and in incidental functions. Equipment specifically prohibited shall include hand presses, foot presses, drop hammers, and similar equipment: *And provided further,* That solder may be of less silver content than nine hundred; *And provided further,* That findings may be mechanically made of any metal by Indians or others: *And provided further,* That turquoise and other stones may be cut and polished by Indians or others without restrictions as to methods or equipment used.

(f) The knitted outerwear industry is defined as follows: The knitting from any yarn or mixture of yarns and the further manufacturing, dyeing or other finishing of knitted garments, knitted garment sections, or knitted garment accessories for use as external apparel or covering which are partially or completely manufactured in the same establishment as that where the knitting process is performed; and the manufacture of bathing suits from any purchased fabric: *Provided,* That the manufacturing, dyeing or other finishing of the following shall not be included:

(1) Knitted fabric, as distinguished from garment sections or garments, for sale as such.

(2) Fulled suitings, coatings, topcoatings, and overcoatings.

(3) Garments or garment accessories made from purchased fabric, except bathing suits.

(4) Gloves or mittens.

(5) Hosiery.

(6) Knitted garments or garment accessories for use as underwear, sleeping wear, or negligees.

(7) Fleece-lined garments made from knitted fabric containing cotton only or containing any mixture of cotton and not more than 25 percent, by weight, of wool or animal fiber other than silk.

(8) Knitted shirts of cotton or any synthetic fiber or any mixture of such fibers which have been knit on machinery of 10-cut or fine: *Provided,* That this exception shall not be construed to exclude from the knitted outerwear industry and the manufacturing, dyeing, or other finishing of knitted shirts made in the same establishment as that where the knitting process is performed, if such shirts are made wholly or in part of fibers other than those specified in this clause, or if such shirts of any fiber are knit on machinery coarser than 10-cut.

(g) The gloves and mittens industry is defined as follows: The production of gloves and mittens from any material or combination of materials, except athletic gloves and mittens.

(h) The button and buckle manufacturing industry is defined as follows: The manufacture of buttons, buckles, and slides, and the manufacture of blanks and parts for such articles from any material except metal, for use on apparel.

(i) The handkerchief manufacturing industry is defined as follows: The manufacture of men's, women's and children's handkerchiefs, plain or ornamented, from any materials.

(j) The embroideries industry is defined as follows: The production of all kinds of hand and machine-made embroideries and ornamental stitchings, including but not by way of limitation, tucking shirring, smocking, hemstitching, hand rolling, fagoting, Bonnez embroidery, appliqueing, crochet beading, hand drawing, machine drawing, rhinestone trimming, sequin trimming, spangle trimming, eyelets, passemen-

terie, pleating, the application of rhinestones and nailheads, stamping and perforating of designs, Schifli embroidery and laces, burnt-out laces and velvets, Swiss handmachine embroidery, thread splitting, embroidery thread cutting, scallop cutting, lace cutting, lace making-up, making-up of embroidered yard goods, straight cutting of embroidery and cutting out of embroidery, embroidery trimmings, bindings (not made in textile establishments), pipings and emblems: *Provided*, That (1) the foregoing when produced or performed by a manufacturer of a garment, fabric or other article for use on such garment, fabric or other article, and (2) the manufacture of covered buttons and buckles, shall not be included.

(Sec. 11, 52 Stat. 1066 (29 U.S.C. 211); Secretary's Order No. 16-75, 40 FR 55913, Dec. 2, 1975; and Employment Standards Order No. 78-1, 43 FR 51469, Nov. 3, 1978)

[24 FR 729, Feb. 3, 1959, as amended at 46 FR 50349, Oct. 9, 1981; 49 FR 22036, May 24, 1984]

§ 530.2 Restriction of homework.

Except as provided in § 530.4(c), no work in the industries defined in paragraphs (d) through (j) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homemaker or unless the homeworker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.2 of this chapter.

[49 FR 44270, Nov. 5, 1984]

§ 530.3 Application on official forms.

Certificates authorizing the employment of industrial homeworkers in the industries defined in § 530.1 may be issued on the following terms and conditions upon application therefore on forms provided by the Wage and Hour Division. Such forms shall be signed by both the homeworker and the employer.

(Approved by the Office of Management and Budget under control number 1215-0005)

[24 FR 729, Feb. 3, 1959, as amended at 49 FR 18294, Apr. 30, 1984]

§ 530.4 Terms and conditions for the issuance of certificates.

(a) Upon application by the homeworker and the employer on forms provided by the Wage and Hour Division, certificates may be issued to the applicant employer authorizing the employment of a particular worker in industrial homework in a particular industry, provided that the application is in proper form and sets forth facts showing that the worker:

(1)(i) Is unable to adjust to factory work because of age or physical or mental disability; or

(ii) Is unable to leave home because the worker's presence is required to care for an invalid in the home; and

(2)(i) Was engaged in industrial homework in the particular industry for which the certificate is applied, as such industry is defined in § 530.1, prior to: (*a*) April 4, 1942, in the button and buckle manufacturing industry; (*b*) November 2, 1942, in the embroideries industry; (*c*) April 1, 1941, in the gloves and mittens industry; (*d*) October 7, 1942, in the handkerchief manufacturing industry; (*e*) July 1, 1941, in the jewelry manufacturing industry; or (*f*) March 5, 1942, in the women's apparel industry, except that if this requirement shall result in unusual hardship to the individual homeworker it shall not be applied; or

(ii) Is engaged in industrial homework under the supervision of a State Vocational Rehabilitation Agency.

(b) No homeworker shall perform industrial homework for more than one employer in the same industry, but homework employment in one industry shall not be a bar to the issuance of certificates for other industries.

(c) A certificate may be issued to an employer authorizing the employment of homeworkers in the knitted outerwear industry, as defined in § 530.1(f) of this part; this certificate may be issued irrespective of whether individual homeworkers meet the conditions set forth in paragraph (a) of this section. In the absence of a certificate, the employment of homeworkers in this industry is prohibited, and an employer violating this prohibition is subject to all the sanctions provided in this Act and in this subpart, including an injunction restraining the employment of homeworkers. Certificates authorizing such employment may be issued on the following terms and conditions upon written notice to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210:

(1) The notice of request for certification shall be signed by the employer and shall contain the name of the firm, its mailing address, and the physical location of the firm's principal place of business. The employer shall provide the Administrator, within thirty (30) days, a notice of each change of address of the principal place of business. The notification shall be in writing and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210. Such change of address shall be deemed effective upon receipt by the Administrator unless a later date is specified in the notice.

(2) A request for certification under this subpart may be denied for cause.

(i) Employment of homeworkers in the knitted outerwear industry without a certificate may be cause for denial of a request for certification for a period up to one year from the final date of the violation.

(ii) Failure to pay back wages found to be due as a result of a violation of sections 15(a)(2) or 15(a)(3) shall be cause for denial of a certificate until the back wages are paid.

(iii) Failure to pay civil money penalties determined to be owing for a violation of section 15(a)(4) shall be cause for denial of a certificate until the civil penalties are paid.

(iv) Violation of any provision of the FLSA or the regulations issued thereunder may be cause for denial of a certificate for a period of up to one year from the final date of the violation.

(v) An open investigation may result in the withholding of a certificate pending the conclusion and resolution thereof.

Before any certificate is denied, interested parties shall be notified in writing of the facts warranting such denial and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator shall afford an opportunity for a hearing to resolve the disputed matter.

(3) An employer issued a certificate under this subpart may be subject to investigaton at any time to determine compliance with the provisions of the Fair Labor Standards Act.

(Information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1215-0005. Information collection requirements contained in paragraph (c) were approved under control number 1215-0159.)

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[24 FR 729, Feb. 3, 1959, as amended at 43 FR 28470, June 30, 1978; 46 FR 50349, Oct. 9, 1981; 49 FR 44270, Nov. 5, 1984]

§ 530.5 Investigation.

An investigation may be ordered in any case to obtain additional data or facts. A medical examination of the worker or invalid may be ordered or a certification of facts concerning eligibility for the certificate by designated officers of the State or Federal Government may be required.

§ 530.6 Termination of certificates.

(a) A certificate shall be valid under the terms set forth in the certificate for a period to be designated by the Administrator or his authorized representative. Application for renewal of any certificate shall be filed in the same manner as an original application under this part.

(b) No effective certificate shall expire until action on an application for renewal shall have been finally de-

termined, provided that such application has been properly executed in accordance with the requirements, and filed not less than 15 nor more than 30 days prior to the expiration date. A final determination means either the granting of or initial denial of the application for renewal of a certificate, or withdrawal of the application. A "properly executed" application is one which contains the complete information required on the form.

[24 FR 729, Feb. 3, 1959, as amended at 27 FR 7020, July 25, 1962]

§ 530.7 Revocation and cancellation.

Any certificate may be revoked for cause at any time. Violation of any provision of the Fair Labor Standards Act shall be sufficient grounds for revocation of all certificates issued to an employer, in which event no certificates shall be issued to the offending employer for a period of up to one year. Before any certificate is cancelled, however, interested parties shall be notified in writing of the facts warranting such cancellation and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator shall afford an opportunity for a hearing to resolve the disputed matter.

[49 FR 44271, Nov. 5, 1984]

§ 530.8 Preservation of certificates.

A copy of all certificates provided to the employer under this part shall be maintained for a period of at least three years after the last employment under the certificate.

[49 FR 44271, Nov. 5, 1984]

§ 530.9 Records and reports.

The issuance of a certificate shall not relieve the employer of the duty of maintaining the records required in the regulations in Part 516 of this chapter and failure to keep such records shall be sufficient cause for the cancellation of certificates issued to such an employer.

§ 530.10 Delegation of authority to grant, deny, or cancel a certificate.

The Administrator may from time to time designate and appoint members of the Administrator's staff or State Agencies as his authorized representatives with full power and authority to grant, deny, or cancel homework certificates.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28470, June 30, 1978]

§ 530.11 Petition for review.

Any person aggrieved by the action of an authorized representative of the Administrator in granting or denying a certificate may, within 15 days thereafter or within such additional time as the Administrator for cause shown may allow, file with the Administrator a petition for review of the action of such representative praying for such relief as is desired. Such petition for review, if duly filed, will be acted upon by the Administrator or an authorized representative of the Administrator who took no part in the proceeding being reviewed. All interested parties will be afforded an opportunity to present their views in support of or in opposition to the matters prayed for in the petition.

§ 530.12 Special provisions.

(a) *Gloves and mittens industry.* Any certificate issued to an industrial homeworker by the New York State Department of Labor under paragraph II of Home Work Order No. 4 Restricting Industrial Homework in the Glove Industry, dated June 28, 1941, will be given effect by the Administrator as a certificate permitting the employment of the homeworker under the terms of § 530.4 for the period during which such certificate shall continue in force.

(b) *Jewelry manufacturing industry.* Nothing contained in the regulations in this part shall be construed to prohibit the employment, as homeworkers, of American Indians residing on the Navajo, Pueblo, and Hopi Indian Reservations, who are engaged in producing genuine hand-fashioned jewelry on the Indian reservations mentioned, provided the employment of such homeworker is in conformity with the following conditions:

(1) That each employer of one or more Indian homeworkers engaged in making hand-fashioned jewelry on these Indian reservations shall submit in duplicate to the regional office of the Wage and Hour Division for the region in which the employer's place of business is located, on April 1, August 1, and December 1 of each year, the name and address of such employee engaged during the preceding 4-month period in making hand-fashioned jewelry on Indian reservations;

(2) That each employer of one or more Indian homeworkers engaged in making hand-fashioned jewelry on these Indian reservations shall file copies of the piece rates in duplicate with the regional office of the Wage and Hour Division for the region in which the employer's place of business is located on April 1, August 1, and December 1 of each year, and

(3) That each employer of one or more Indian homeworkers engaged in making hand-fashioned jewelry on these Indian reservations shall keep, maintain, and have available for inspection by the Administrator or the Administrator's authorized representative at any time, records and reports showing with respect to each of the homeworkers engaged in making hand-fashioned jewelry on these Indian reservations, the following information:

(i) Name of the homeworker.

(ii) Address of the homeworker.

(iii) Date of birth of the homeworker, if under 19 years of age.

(iv) Description of work performed.

(v) Amount of cash wage payments made to the homeworker for each pay period.

(vi) Date of such payment.

(vii) Schedule of piece rates paid.

These records shall be kept by each employer for each of the employer's homeworkers engaged in making hand-fashioned jewelry on Indian reservations, as provided in this section, in lieu of the records required under §§ 516.2 and 516.31 of this chapter: *Provided, however,* That nothing in this section shall relieve an employer from maintaining all other records required by Part 516 of this chapter.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[24 FR 729, Feb. 3, 1959, as amended at 43 FR 28470, June 30, 1978]

§ 530.13 Petition for amendment of regulations.

Any person wishing an amendment, addition, or revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the changes desired and reasons for proposing them. If upon inspection of the petition, or upon the Administrator's own motion, the Administrator believes that reasonable cause for amendment of the rules and regulations appears, the Administrator will, unless it is impractical, unnecessary, or contrary to the public interest to do so, either schedule a hearing with due notice to interested persons or make other provisions to afford interested persons opportunity to present their veiws in support of or in opposition to the proposed changes.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28470, June 30, 1978]

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